

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

AKIKO DAVIS,

Plaintiff,

V.

THE KROGER CO.,

Defendant.

**Civil Action File No.**

*Removed from:*

State Court of Cobb County

Civil Action No. 21-A-3497

## **DEFENDANT THE KROGER CO.'S PETITION FOR REMOVAL**

Pursuant to 28 U.S.C. § 1441, Defendant The Kroger Co. (hereinafter referred to as “Kroger”) hereby petitions this Court for removal of this action, and shows this Honorable Court the following:

1.

This civil action was filed by Plaintiff Akiko Davis (the “Plaintiff”) in the State Court of Cobb County, Georgia, said county being part of the Northern District of Georgia, Atlanta Division. N.D. Ga. Local Rule 3.1(A), LR App. A, I. The Atlanta Division of this Court is the proper Division for this removal as further set forth below.

2.

The action is a civil action for personal bodily injuries and medical expenses, and this Court has subject matter jurisdiction by reason of the diversity of citizenship of the parties. 28 U.S.C. §§ 1441, 1332.

3.

The amount in controversy exceeds \$75,000.00, the statutory minimum amount, exclusive of interest and costs, as evidenced by *Defendant The Kroger Co's First Requests for Admissions to Plaintiff Akiko Davis* and *Plaintiff's Responses to Defendant The Kroger Co's First Requests for Admissions* (see Exhibits "A" and "B" respectively) in which Plaintiff admits the amount in controversy, exclusive of interests and costs, in this matter exceeds \$75,000.00 and that Plaintiff Akiko Davis seeks to recover damages in this case in an amount greater than \$75,000.00.

4.

At the time of the commencement of this action in the State Court of Cobb County, upon information and belief, and according to Plaintiff's Complaint, the Plaintiff was and is now a citizen of Georgia.

5.

Kroger, at the time the action was commenced and at the present time, was and still is a corporation, incorporated and existing under and by virtue of the laws of Ohio having its principal place of business in Ohio, and a citizen of Ohio.

6.

The complete diversity requirement in 28 U.S.C. § 1332 has been satisfied.

7.

True and correct copies of all process, pleadings, and orders served upon Kroger in this action are attached hereto collectively as Exhibit C.

9.

The Plaintiff alleges in her Complaint that, due to the negligence of Kroger, she tripped but did not fall on a mat in the entrance/exit area that was allegedly bunched up at the Kroger store located at 5900 E. Lake Parkway, McDonough, Georgia 30253. (Complaint, ¶ 4, 5).

10.

This civil action is based on a controversy between citizens of different states, and as outlined above, the amount in controversy exceeds \$75,000.00. As

such, this matter has become ripe for removal based on diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1).

11.

Accordingly, this action, over which this Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1332, is removable to the United States District Court for the Northern District of Georgia, pursuant to 28 U.S.C. § 1441.

12.

Venue is proper in the Atlanta Division of the United States District Court for the Northern District of Georgia pursuant to 28 U.S.C. § 1441, 28 U.S.C. § 1391, and N.D. Ga. Local Rule 3.1(B)(1)(a). Specifically, Plaintiff's Complaint was filed in the State Court of Cobb County, which is part of the Atlanta Division. See N.D.G.A. Local Rule 3.1(A), LR App. A, I.

13.

The instant *Petition for Removal* is timely filed pursuant to and in accordance with 28 U.S.C. § 1446(b)(3) within thirty days after the disclosure given by Plaintiff in the form of *Plaintiff's Responses to Defendant's First Requests for Admissions*.

14.

Further, the instant Petition is timely filed, pursuant to and in accordance with 28 U.S.C. § 1446(c)(1), within one year of the commencement of the action.

15.

As required by 28 U.S.C. § 1446(d), Kroger shall give written notice hereof to all adverse parties and shall file a copy of this Petition with the Clerk of the State Court of Cobb County.

WHEREFORE, Kroger requests that this action be removed from the State Court of Cobb County and proceed in this Court.

Respectfully submitted the 19th day of January, 2022.

GRAY, RUST, ST. AMAND,  
MOFFETT & BRIESKE, LLP

By: /s/ Sean Herald

Matthew G. Moffett

Georgia Bar No. 515323

Sean T. Herald

Georgia Bar No. 246729

*Attorneys for The Kroger Co.*

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**CERTIFICATE OF SERVICE AND COMPLIANCE WITH L.R. 5.1**

This is to certify that I have this day served the **DEFENDANT THE KROGER CO.'S PETITION FOR REMOVAL** upon all counsel of record by electronic mail and depositing same in the United States mail in a properly addressed envelope with adequate postage thereon to:

Lee B. Perkins, Esq.  
5180 Roswell Road  
South Building, Suite 201  
Atlanta Georgia 30342

This is to further certify that the foregoing complies with the font and point selections approved by the Court in Local Rule 5.1. It is prepared in Times New Roman 14-point font.

The 19th day of January, 2022.

By: /s/ **Sean Herald**  
Matthew G. Moffett  
Georgia Bar No. 515323  
Sean T. Herald  
Georgia Bar No. 246729  
*Attorneys for The Kroger Co.*